

DIRECTIVE

WORKFORCE INVESTMENT ACT

Number: WIAD00-4

Date: November 16, 2000
69:141:va:3878

TO: LOCAL WORKFORCE INVESTMENT AREAS
CHIEF ELECTED OFFICIALS
CALIFORNIA WORKFORCE INVESTMENT BOARD STAFF
WDB STAFF

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive establishes the State's policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I-financially assisted programs or activities.

Scope:

This directive applies to Local Workforce Investment Areas (LWIA) and other WIA Title I grant subrecipients.

Effective Date:

This directive is effective on date of issue.

REFERENCES:

- Section 188 of the Workforce Investment Act of 1998
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Section 667.275
- Title 29 CFR Parts 31, 32, and 37
- Title 41 CFR Subpart 101-19.6
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

This directive finalizes Draft Directive WIADD-6, issued for comment on August 24, 2000. Retain this directive until further notice.

BACKGROUND:

The WIA Section 188 contains the nondiscrimination and equal opportunity provisions, which prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. Title 29 CFR Part 37 implements the nondiscrimination and equal opportunity provisions specified in Section 188 of WIA.

POLICY AND PROCEDURES:

Definitions:

Recipient, taken from Title 29 CFR Part 37, means any entity to which financial assistance under WIA Title I is extended, either directly from the Department of Labor (DOL) or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. In addition, One-Stop partners, as defined in Section 121(b) of WIA, are treated as “recipients” and are subject to the nondiscrimination and equal opportunity requirements of Title 29 CFR Part 37, to the extent that they participate in the One-Stop delivery system.

Complaint, for this directive only, means an allegation of a violation of the nondiscrimination and equal opportunity provisions.

General Provisions:

Title 29 CFR Section 37.54(a) requires that each Governor must establish and adhere to a Methods of Administration (MOA) for state programs. The MOA is a state-level document that reflects the Governor’s commitment to nondiscrimination and equal opportunity. It outlines the activities required to comply with the provisions of WIA and Title 29 CFR Part 37. The provisions of the MOA apply to California Job Service, Unemployment Insurance, and WIA Title I-financially assisted programs, activities, and recipients.

The MOA contains nine distinct elements. This directive outlines these elements and highlights compliance requirements that are significant to LWIAs:

1. Designation of Local-Level Equal Opportunity (EO) Officer

Each LWIA must designate an EO Officer who is responsible for coordinating its obligations under these regulations. The State requests that the LWIAs notify the Workforce Investment Division (WID) Local Policy Guidance Unit Manager whenever the designation of the Local EO Officer changes. The LWIAs will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and Title 29 CFR Section 37.23.

The EO Officer’s responsibilities include:

- Informing employees and participants of their rights and responsibilities;

- Adopting, publishing, and overseeing procedures for processing complaints pursuant to Title 29 CFR Sections 37.76 through 37.79 and ensuring those procedures are followed;
- Hearing, answering, and advising individuals on complaints of discrimination;
- Explaining to LWIA grant recipient employees or participants how the equal opportunity complaint system works; and
- Serving as liaison with the Civil Rights Center (CRC).

The EO Officer's name, position title, business address (including e-mail address if applicable) and telephone number (voice and Telecommunications Device for the Deaf [TDD], which is also known as teletypewriter [TTY]) must be publicized at the local level through a variety of means including posters, handouts, and listings in local directories.

Periodic training is recommended for the EO Officer and staff to keep abreast of equal opportunity issues. The Local Training Response Unit of the WID provides training on nondiscrimination and equal opportunity.

2. Notice and Communication Requirements

Initial and continuing notice of nondiscriminatory practices (attached) and the right to file a complaint must be:

- Posted in prominent locations;
- Disseminated in internal memoranda and other written or electronic communications;
- Included in handbooks and manuals, brochures, broadcasts, and other communications;
- Made available to each participant; and
- Included in each participant's file.

The notice shall be provided in appropriate formats to individuals with visual impairments. A record of this notice shall be documented in the participant's file.

Distributed publications, broadcasts, and other communications, which promote WIA programs or activities, must include the following taglines: "This WIA Title I-financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities." This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media. Where appropriate, information and services should be additionally provided in languages other than English.

The Dymally-Alatorre Bilingual Services Act (DABSA) requires that, when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services into their clients' languages. The DABSA establishes specific legal mandates for state agencies, but

allows local agencies discretion in establishing the level and extent of bilingual services they provide.

Where materials indicate that the LWIA may be reached by telephone, the telephone number of any TDD/TTY or relay service used by the LWIA must be indicated. If the LWIA does not have a TDD/TTY, the California Relay Service (CRS) (1-800/735-2922) is an alternative. The CRS relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay service should be available where services provided by telephone are a major function of the program or activity.

3. Review Assurances in Job Training Plans, Contracts, and Policies and Procedures

A system must be implemented to ensure that all contracts, job training plans, and policies and procedures contain the nondiscrimination assurance as specified. The nondiscrimination assurance must state that the grant applicant will “comply fully with the nondiscrimination and equal opportunity provisions” of WIA and acknowledge the government’s right to seek judicial enforcement of the nondiscrimination assurance.

Title 29 CFR Section 37.20 requires that each application for federal financial assistance under Title I of WIA must include the nondiscrimination assurance. Application for assistance is defined as the process by which required documentation is provided to the Governor, recipient, or DOL prior to and as a condition of receiving federal financial assistance under Title I of WIA (including both new and continuing assistance).

4. Universal Access

As required in Title 29 CFR Section 37.42, LWIAs must ensure universal access to WIA Title I-financially assisted programs and activities by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially WIA Title I-eligible applicants in the entire locale;
- Creating an outreach and recruitment plan that will reach specific target populations through media, schools, and community services groups;
- Considering a pool of individuals for participation that includes members of both sexes, various race/ethnicity/age groups, and individuals with disabilities;
- Establishing a hiring and eligibility process that is accessible to qualified applicants with disabilities; and
- Utilizing facilities designed to provide reasonable access to individuals with disabilities in the following areas: training, job structure, work schedule, work procedure, and work equipment and auxiliary aids accommodations.

5. Compliance With Section 504 of the Rehabilitation Act of 1973, as Amended and Title 29 CFR Part 37

The LWIAs must ensure the accessibility to their training programs and activities for all individuals, and must administer their training programs and activities in the most

integrated setting appropriate to the needs of qualified individuals with disabilities. This includes employment tests or other selection criteria used by LWIAs that do not screen out individuals with disabilities, and training programs accessible to individuals with visual, hearing, or speech impairments. The LWIAs must provide means for individuals with disabilities to receive information about availability of facilities accessible to them. Additionally, LWIAs must provide auxiliary aids and services and reasonable accommodation to qualified individuals with disabilities to enable them to perform duties of the job (e.g., special aids, modified work sites, or restructuring of jobs).

The LWIAs must also provide:

- Designated parking for the disabled that is accessible to the building entrance, free of any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel);
- Signage at a primary entrance to each of their inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities;
- The international symbol for accessibility at each primary entrance of an accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information/public counter areas;
- Facility elevators that are accessible from the entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone;
- Accessible meeting rooms with Braille symbols at an accessible height;
- Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and
- Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

Title 29 CFR Section 37.9—*What are a recipient's responsibilities to communicate with individuals with disabilities?*—states: “In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIA Title I-financially assisted program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.” The definition of “fundamental alteration” incorporates the concept of “undue financial and administrative burdens” in Title 29 CFR Part 37.

6. Data and Information Collection and Maintenance

In compliance with Section 188 of WIA, LWIAs and service providers must:

- Collect data on race/ethnicity, sex, age, and, where known, disability status, of each applicant, registrant, eligible applicant/registant, participant, terminee, applicant for employment, and employee;
- Maintain records of data in a system designed to allow the State and CRC to conduct statistical or other quantifiable analyses to verify compliance;
- Safeguard the confidentiality of the required information (confidential information should only be used for recordkeeping and reporting purposes; determining eligibility, where appropriate, for WIA Title I-financially assisted program or activity; determining if the LWIA is operating its WIA program in a nondiscriminatory manner, or other use authorized by law);
- Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a LWIA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program and activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by CRC;
- Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

7. Monitor Recipients for Compliance

In accordance with Title 29 CFR Sections 37.54(d)(2)(ii) and 37.54(d)(2)(iii), the Compliance Review Division (CRD) of EDD's Program Review Branch monitors LWIAs for compliance with WIA provisions and related regulations.

The CRD requires that each LWIA complete and submit to the CRD a Nondiscrimination and Equal Opportunity Self-Evaluation annually. The CRD will review the self-evaluations, along with other equal opportunity-related data, and coordinate with EDD's Equal Opportunity Office in determining if the LWIA will be monitored on-site during a given program year. Through self-evaluations, LWIAs can identify the compliance status of their programs, activities, and areas in which they need technical assistance.

8. Complaint Processing Procedures

In compliance with nondiscrimination and equal opportunity provisions of the WIA and Title 29 CFR Section 37.76, the EO Officer must:

- Adopt and publish procedures for resolving allegations within the LWIA for noncompliance with applicable nondiscrimination and equal opportunity provisions;

- Adopt and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures (NOTE: Although the LWIA does not have the same contractual jurisdiction with vendors as with service providers, ***the LWIA shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the LWIA should continue to utilize the services of the vendor.***); and
- Establish a system to record discrimination complaints.

The LWIA's complaint processing procedures should specify the following:

- a. Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of WIA may file a written complaint, or a representative may file the complaint on his or her behalf.
- b. The complaint may be filed either with the recipient's EO Officer (or the person designated for this purpose), or directly with CRC, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, D.C. 20210.
- c. A complaint filed pursuant to Title 29 CFR 37 must be filed within 180 days of the alleged discrimination. The CRC, for good cause shown, may extend the filing time. In order to receive an extension, the complainant must be notified that a waiver letter is to be filed with CRC. The waiver letter should include the reason the 180-day time period elapsed. This time period for filing is for the administrative convenience of CRC and does not create a defense for the respondent.
- d. Complaints should be filed in writing and shall:
 - Be signed by the complainant or his or her representative;
 - Contain the complainant's name, address, or other means of contacting him or her;
 - Identify the respondent; and
 - Describe the complainant's allegation in sufficient detail to allow CRC or the LWIA, as applicable, to determine whether (1) CRC or the LWIA has jurisdiction over the complaint; (2) the complaint was filed timely; and (3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA.
- e. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.
- f. The methods available to resolve the complaint must include alternative dispute resolution (ADR) procedures. The procedures must provide that:
 - (1) The choice whether to use ADR or the customary process rests with the complainant, and

- (2) A party to any agreement reached under ADR may file a complaint with CRC in the event the agreement is breached. In such circumstances, the following rules will apply:
- The non-breaching party may file a complaint with CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
 - The CRC must evaluate the circumstances to determine whether the agreement has been breached. If CRC determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his or her original allegation(s), and CRC will waive the time deadline for filing such a complaint.
- (3) If the parties do not reach an agreement under ADR, the complainant may file directly with CRC as described in Title 29 CFR Sections 37.71 through 37.74.

g. Complaints filed with the LWIA:

The Equal Employment Opportunity Office and WID require a copy of the complaint. Please mail one copy to each of the following addresses:

***Chief
Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

***Local Policy Guidance Unit Manager
Workforce Investment Division
Employment Development Department
800 Capitol Mall, MIC 69
P.O. Box 826880
Sacramento, CA 94280-0001***

- (1) The LWIA shall be allowed 90 days to issue a Notice of Final Action. If, during the 90-day period, the LWIA issues a decision that is not acceptable to the complainant, the complainant or his or her representative may file a complaint with CRC within 30 days after the date on which the complainant receives the Notice.
- (2) If the 90 days expire and the complainant does not receive a Notice of Final Action from the LWIA, or the LWIA failed to issue a Notice of Final Action, the complainant or his/her representative may, within 30 days of the expiration of the 90-day period, file a complaint with CRC. In other words, the complaint must be filed with CRC within 120 days of the date on which the complaint was filed with the LWIA.
- (3) The CRC may extend the 30-day time limit if the complainant is not notified, as provided in Title 29 CFR Section 37.81, or for other good cause shown.

- (4) The LWIA shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. The Notice of Lack of Jurisdiction must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with CRC within 30 days of receipt of the Notice.

h. Actions by the CRC:

- (1) The CRC determines acceptance of a complaint filed pursuant to Title 29 CFR Section 34.82. When CRC accepts a complaint for investigation, it shall:
 - Notify the LWIA and the complainant of the acceptance of the complaint for investigation; and
 - Advise the LWIA and complainant on the issues over which CRC has accepted jurisdiction.
- (2) The LWIA, the complainant, or a representative may contact CRC for information regarding the complaint filed.
- (3) When a complaint contains insufficient information, CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address.
- (4) The CRC, per WIA Section 183(c), may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.
- (5) Where CRC lacks jurisdiction over a complaint, CRC shall:
 - Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIA or Title 29 CFR Part 37; and
 - Refer the complainant to the appropriate federal, state, or local authority, when possible.
- (6) The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.
- (7) The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).
- (8) If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation

under the procedures described in Title 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the LWIA of the referral.

- (9) Under the One-Stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grantmaking agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:
 - If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the federal grantmaking agency, CRC and the grantmaking agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grantmaking agency for processing. The grantmaking agency's regulation will govern the processing of the complaint.
 - If the complainant alleges discrimination on the basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the federal grantmaking agency, CRC has sole jurisdiction over the complaint and will retain and process the complaint pursuant to Title 29 CFR Part 37. The CRC will advise the complainant and the LWIA of the referral.
- (10) The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply:
 - The mediation is voluntary; the parties must consent before the mediation process will proceed.
 - The mediation will be conducted under the guidance issued by CRC.
 - If the parties are unable to reach resolution of the complaint through the mediation, CRC will investigate and process the complaint under Title 29 CFR Sections 37.82 through 37.88.
- (11) After making such a cause finding, CRC shall issue an Initial Determination. The Initial Determination shall notify the complainant and the LWIA, in writing, of:
 - The specific findings of the investigation;
 - The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
 - Whether it will be necessary for the LWIA to enter into a written agreement; and
 - The opportunity to participate in voluntary compliance negotiations.
- (12) Where a no cause determination is made, CRC must issue a Final Determination to the complainant and the LWIA. The Final Determination represents the DOL's final agency action on the complaint.

9. Corrective Actions/Sanctions

A Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively, must include the steps and the specific time period it will take the LWIA to achieve voluntary compliance. (See Section 37.94 for corrective action steps.)

Monetary corrective action may **not** be paid from federal funds.

If the LWIA receives a finding of noncompliance, the following sections of Title 29 CFR Part 37 may be referred to for detailed information:

- Final Determinations, Sections 37.90-37.101
- Breaches of Conciliation Agreements, Sections 37.102-37.105
- Subpart E-Federal Procedures for Effecting Compliance, Sections 37.110-37.115

ACTION:

Bring this directive to the attention of affected staff.

INQUIRIES:

Please direct inquiries about this directive to your regional advisor, at (916) 654-7799 or Georganne Pintar Baldwin, Local Policy Guidance Unit Manager, at (916) 654-7611.

/S/ BILL BURKE
Chief

Attachment

EQUAL OPPORTUNITY IS THE LAW

It is against the law for this recipient of federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with, such a program or activity.

WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.